IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2539 OF 2004
WITH
NOTICE OF MOTION NO. 816 OF 2002

Shri Madhav Gadkari & Ors. ...Petitioners

V/s.

Union of India & Ors. ...Respondents

Mr. V.R. Bhandare with Mr. Parag Kale for the Petitioners

Mr. Rajiv Chavan for Respondent No. 1

Mr. Ravi Kadam, Advocate-General, with Mr. R.M. Sawant, Government Pleader, for Respondent Nos. 3A, 5, 6 and 8

Mr. Mihir Desai for the Intervenor

Mr. N.H. Seervai, Senior Counsel, instructed by M/s. Mehta & Girdharlal for the Intervenor

Mr. Nitin Vhatkar for the Applicant.

CORAM: DALVEER BHANDARI, C.J., &
S. A. BOBDE, J.
DATE: APRIL 6, 2005.

P.C.:

1. In this petition, it is prayed that several persons, who have encroached upon railway compound and footpaths of several roads and streets in Mumbai, are not entitled to be enrolled in the Electoral Register of any of the constituencies in Greater Mumbai. It is further prayed that respondent Nos. 2 and 3 be directed to delete from the Voters List of Maharashtra Assembly Constituencies No. 19 to 52 in Mumbai names of all persons living in railway compound, on footpaths of roads and streets and plots of land designated and marked for use other than residence.

2. Article 326 of the Constitution provides for elections on the basis of adult suffrage. It empowers all, who are 18 years of age and above and who are not disentitled under the Constitution of India or any other law made by appropriate legislature to be registered as voters, to vote.

3. Section 16 of the Representation of the People Act, 1950 ("the Act", for short) deals with disqualification for registration in an Electoral Roll. Section 16 reads as under:-

> "**Disqualification for registration in an electoral roll.**--"
>
> (1) A person shall be disqualified for registration in an electoral roll if he—
>
> (a) is not a citizen of India; or
>
> (b) is of unsound mind and stands so declared by a competent Court; or
>
> ©is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal."

4. Section 19 of the Act deals with the conditions of registration. Section 19 is reproduced as under:-

"**Conditions of registration.–**

Subject to the foregoing provisions of this Part, every person who--

(a) is not less than 18 years of age on the qualifying date, and

(b) is ordinarily resident in a constituency

shall be entitled to be registered in the electoral roll for that constituency."

4. This is in the domain of the Legislature to disqualify or put conditions of registration. It would be inappropriate for the Court to add or reduce the conditions which have been incorporated in the Representation of the People Act, 1950 and 1951.

5. The learned counsel for the petitioners cited *New Delhi Municipal Committee v. Kaluram,* AIR 1976 SC 1637. The facts of this case have no relevance as far as the instant case is concerned. The Court in the said case held as under:-

> "The word ' payable' in Section 7 [of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958], in the context in which it occurs, means "legally recoverable". If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim debt otherwise time-barred."

6. We fail to comprehend how the ratio of this case has any application to the facts and law involved in this case.
7. The petitioners also relied on Reference *Abdul Manan,* (1971) 2 All ER 1016, in support of his contention regarding ordinary residence. This judgment also cannot provide any

assistance to the petitioners, because *Abdul Manan*'s case deals with a Pakistani seaman, who deserted his ship and arrived in England and stayed there in contravention of immigration laws. The case of *Abdul Manan* cannot be compared with the case of encroachers, because these so-called encroachers were admittedly born and raised in this country.

8. In our considered view, this Writ Petition is wholly misconceived. It is accordingly dismissed.

9. Since we dismissed the main petition, the Notice of Motion filed by the petitioners does not survive, and it is also accordingly dismissed.

CHIEF JUSTICE

S. A. BOBDE, J.